

REMARKS

Claims 10 and 21 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner held that claim 10 is indefinite because it contradicts claim 1 because claim 1 states a one-piece can and claim 10 adds a threaded plastic insert making the can at least two pieces. Claim 21 is similarly indefinite with respect to the one piece can claimed in claim 12 from which it depends.

Claims 10 and 21 are herein cancelled.

Claim 12-15, 17-21 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Diekhoff (U.S. Pat. No.: 6,010,026). Specifically, the Examiner stated:

Diekhoff discloses a one piece aluminum (series 3000 aluminum) can (see Fig. 28) with threaded neck finish, tapered shoulder, cylindrical sidewall, domed bottom free of wrinkles and the area of U-shaped profile at the periphery of the bottom. The initial thickness of 0.51 mm is an intermediate step in the process of forming the final product would not dictate either a final wall thickness equal to 0.51mm, a wall thickness thinner or a wall thickness thicker. This limitation doesn't have any structural effect on the final formed can. Also, the brushed limitation doesn't have any structural effect on the final formed can. The dimensions recited within claim 18 are within the ranges given in Diekhoff.

Claims 14 and 21 are herein cancelled.

Claim 12 is amended to recite "said bottom portion having a thickness of approximately 0.51 mm in the area of said U-shaped profile" It is respectfully submitted that, as discussed on page 3 of the Office Action, Diekhoff teaches in the embodiment of Fig. 30 a bottom area 95 in the range of 0.010 – 0.015 inch. Thus, it is respectfully submitted that Diekhoff fails to disclose or teach a bottom portion thickness of approximately 0.51 mm.

For the reasons discussed above, it is believed that claim 12 is in condition for allowance. Accordingly, it is respectfully requested that the rejection of claim 12 pursuant to 35 U.S.C. §102(b) be withdrawn.

Claims 13, 15, and 17-20 depend from allowable base claim 12. For the reasons discussed above in conjunction with claim 12, it is believed that claims 13, 15, and 17-20 are in condition for allowance.

Accordingly, it is respectfully requested that the rejection of claims 12, 13, 15 and 17-20 pursuant to 35 U.S.C. § 102(a) be withdrawn.

Claims 1-11, 16 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Diekhoff. Specifically, the Examiner stated:

Re: claim 1 and 22, Diekhoff discloses the invention except for the thickness sufficient to withstand 270 psi. Well known engineering principles indicate that larger wall thicknesses provide the capability to withstand larger internal pressures than smaller thicknesses within pressure vessels. It would have been obvious to increase a vessel's internal pressure capability by increasing wall thickness in order to allow the beverage package to withstand harsher treatment and therefore higher pressure without rupture or failure.

Applicants respectfully submit that the Office has not established a *prima facie* case of obviousness. Specifically, Applicants believe that the Examiner has failed to provide adequate support for the position that there is some suggestion, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the thickness sufficient to withstand 270 psi to obtain the claimed invention.

Diekhoff is directed towards providing "a method for forming threaded metal containers which are lighter weight than prior art containers." (Column 2, lines 17 – 19.) Additionally, Diekhoff "facilitates the use of thin gauge, hard temper metal to manufacture threaded light weight cans which are unlike the heavy gauge threaded aluminum cans produced by previously known methods and apparatus." (Column 3, lines 54-58). Further, Diekhoff states that "[C]ans of this invention provide a lightweight, low cost, economically recyclable, resealable, reclosable, non-shattering, crushable package which is suitable for hot filling, cold filling, aseptic filling, pasteurization, and retorting and for holding internal pressures of 40-110 psi with long shelf life due to the barrier properties of the metal." (Column 13, lines 21-27). In contrast, the present invention is directed to providing a can that withstands an internal pressure of 270 psi. (Page 8, Paragraph 0043.)

Thus, it is respectfully submitted that Diekhoff and the present invention are directed to solving two distinct problems, namely, Diekhoff involving forming threaded metal containers which are lighter weight and use a thin gauge metal to create a lightweight, low cost can suitable for holding internal pressures of 40 –110 psi and the present invention involving creating a can that withstands an internal pressure of 270 psi, with a metal starting thickness of 0.51 mm and therefore a bottom thickness of

approximately 0.51mm, and a method of making and necking the same. It is further submitted that the different materials and designs are selected based upon their ability to solve these distinct problems. Additionally, it was not possible to simply increase the metal thickness of Diekhoff and create the present invention can as Diekhoff does not teach a method for producing a can using thick gauge metal. Accordingly for these reasons, it is believed that the teachings of Diekhoff and general engineering principals cannot be combined to create the present invention and the rejection of claims 1 and 22 pursuant to 35 U.S.C. §103(a) should be withdrawn.

Claims 10 and 11 are herein cancelled.

Claims 2-9 depend from allowable base claim 1. For the reasons discussed above in conjunction with claim 1, it is believed that claims 2-9 are in condition for allowance. Accordingly, it is respectfully requested that the rejection of claims 2-9 pursuant to 35 U.S.C. § 103(b) be withdrawn.

With respect to claims 5 and 16, Diekhoff teaches varying wall thickness in the embodiment of Fig. 30 with bottom area 95 in the range of 0.010 – 0.015inch, lower vertical sidewall 93 in the range of 0.045 – 0.065 inch and upper sidewall 92 in the 0.065 – 0.0085 inch range. As stated in the Office Action, the present invention's thickness ratio of bottom area is 0.51 mm, and Diekhoff fails to teach or disclose a bottom area thickness of 0.51 mm. It is further submitted that the different materials and designs are selected based upon their ability to solve these distinct problems. It is not possible to simply increase the metal thickness of Diekhoff and create the present invention can as Diekhoff does not teach a method for producing a can using thick gauge metal. Accordingly for these reasons, it is believed that the teachings of Diekhoff and general engineering principals cannot be combined to create the present invention and the rejection of claims 5 and 16 pursuant to 35 U.S.C. §103(a) should be withdrawn.

Claims 23 and 24 have been added. Support for these claims may be found in FIG. 53 and in paragraphs 0036, 0039, and 0045. No new matter has been added.

Appl. No.: 10/803,285
Docket No.: DB000982-004
Amdt. Dated: 9/28/2007
Reply to Office action of 03/28/2007

Applicants have made a diligent effort to place the claims in condition for allowance. Accordingly, a Notice of Allowance for claims 1-9, 12-13, 15-20, 22-24 is respectfully requested. If the Examiner is of the opinion that the instant application is in condition for disposition other than through allowance, the Examiner is respectfully requested to contact applicants' attorney at the telephone number listed below so that additional changes may be discussed.

Respectfully submitted,



Jenifer S. Tarasi
Reg. No. 46,064
Thorp Reed & Armstrong LLP
One Oxford Centre, 14th Floor
Pittsburgh, PA 15219-1425
(412) 394-2360

Dated: 9/28/2007

Attorneys for Applicant